

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3245 of 2014

1.Kasthuri

2.Navaneetha Naicker

.. Appellants/Claimants

Vs.

1.J. Vedaprakash

(R1 remained exparte before the Tribunal.)

2.Bharati Axa Insurance Co. Ltd.,

No.162, 2nd Floor, Metro Plaza,

Anna Salai, Chennai 2.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.04.2013, made in M.C.O.P. No.4661 of 2011, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr. N.M.Elumalai

For Respondents: Mr. S. Arun Kumar (For R2)

R1 : Exparte

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 12.04.2013, made in M.C.O.P. No.4661 of 2011, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellants filed M.C.O.P. No.4661 of 2011, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.20,00,000/- as

compensation for the death of one N.Anandan, who died in the accident that took place on 13.10.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.8,20,000/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the award dated 12.04.2013, made in M.C.O.P. No.4661 of 2011, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was working as a Supervisor in Technic Air Conditioner Company and was earning a sum of Rs.10,725/- per month as salary. The appellants examined P.W.3 Proprietor of the said company who deposed that the deceased was working a Service Supervisor and was paid Rs.10,725/- per month as salary. P.W.4 who is the classmate of the deceased deposed that he is earning a sum of Rs.21,055/- per month as salary and if the deceased is alive, he would have earned the same amount. The appellants have also marked Ex.P8 - course completion certificate for having completed Diploma in Electrical and Electronics Engineering. The Tribunal without considering the evidence of PW3 & PW4, erroneously fixed a meagre sum of Rs.8,000/- per month as notional income of the deceased.. The deceased was a bachelor aged 21 years, at the time of accident. The correct multiplier applicable as per II Schedule of the Motor Vehicles Act is '17', while the Tribunal erroneously applied the multiplier '11'. The amounts awarded by the Tribunal towards loss of love and affection, loss of dependency and funeral expenses are meagre. The Tribunal failed to award any amount towards loss of estate and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the educational qualification, oral evidence of P.W.3 and P.W.4 and documentary evidence on record, rightly fixed a sum of Rs.8,000/- per month as notional income and granted compensation. The total compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8. From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was working as a Supervisor in Technic Air Conditioner Company and was earning a sum of Rs.10,725/- per month as salary. They have examined P.W.3 Proprietor of the said Company, P.W.4, classmate of the deceased to prove the avocation and income and has marked course completion certificate as Ex.P8 and salary slip as Ex.P9. The Tribunal without considering the evidences on record, fixed a meagre sum of Rs.8,000/- per month as notional income. The accident is of the year 2010. Considering the date of accident and educational qualification of the deceased, a sum of Rs.10,000/- per month, is fixed as notional income of the deceased. The deceased was aged 21 years at the time of accident. The Tribunal considering the age of the appellants who are the father and mother of the deceased as 55 years and 52 years respectively, adopted multiplier '11'. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], age of the deceased is basis for applying multiplier. The deceased was aged 21 years and Bachelor at the time of accident. The correct multiplier applicable is '18'. The Tribunal has rightly erroneously granted 50% enhancement towards future prospects. The appellants are entitled to only 40% enhancement towards future prospects. Hence, by applying multiplier '18', granting 40% enhancement towards future prospects and deducting 50% towards personal expenses, the amounts awarded by the Tribunal towards loss of dependency is enhanced to Rs.15,12,000/- {[Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] x 12 x 18 x 50%}. The Tribunal has awarded a meagre sum of Rs.20,000/- towards loss of love and affection to the appellants and the same is meagre. The appellants, being parents of the deceased, are each entitled to a sum of Rs.40,000/- towards loss of love and affection. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, which is also meagre. Hence the same is enhanced to Rs.15,000/-. The Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amount granted by the Tribunal towards transportation is just and reasonable and hence, the same is confirmed.

9. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants.

Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	7,92,000/-	15,12,000/-	Enhanced
2.	Loss of love and affection	20,000/-	80,000/-	Enhanced
3.	Transportation	3,000/-	3,000/-	Confirmed
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	8,20,000/-	16,25,000/-	Enhanced by Rs.8,05,000/-

10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.8,20,000/- is enhanced to Rs.16,25,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.4661 of 2011. On such deposit, the appellants are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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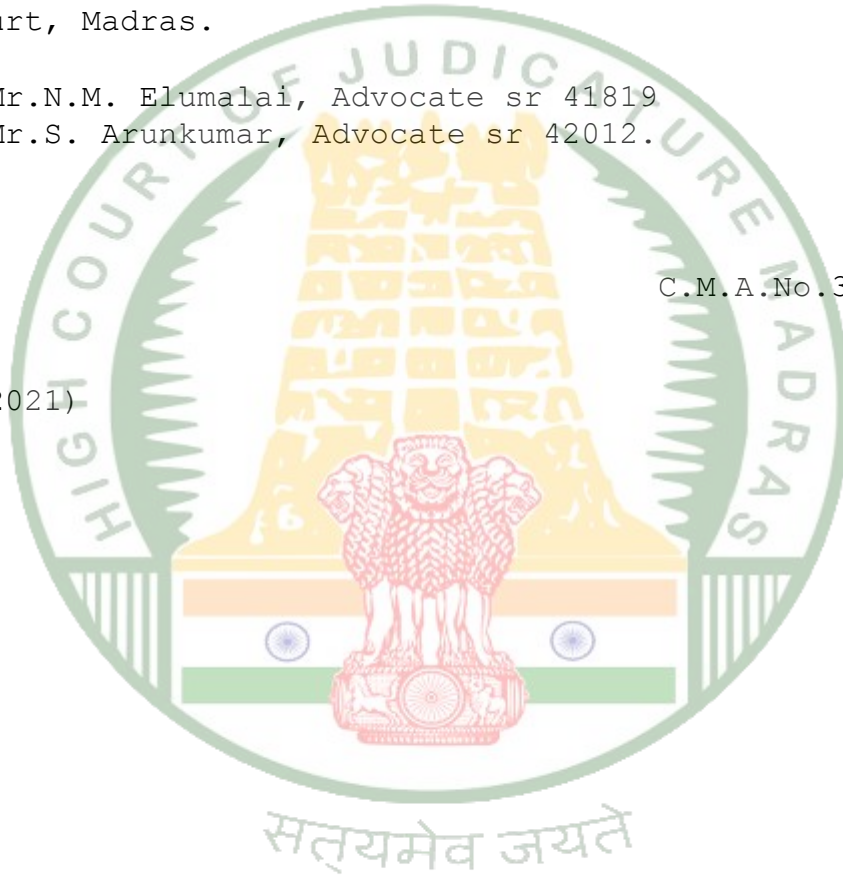
1.The IV Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1 CC to Mr.N.M. Elumalai, Advocate sr 41819
+1 CC to Mr.S. Arunkumar, Advocate sr 42012.

C.M.A.No.3245 of 2014

SV(CO)
SP(05/01/2021)



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